

DISTRICT OF COLUMBIA
DOH Office of Adjudication and Hearings
825 North Capitol Street N.E., Suite 5100
Washington D.C. 20002

DISTRICT OF COLUMBIA
DEPARTMENT OF HEALTH
Petitioner,

v.

LILLIAN A. YOUNG
Respondent

Case No.: I-00-20332

FINAL ORDER

I. Introduction

On January 4, 2002, the Government served a Notice of Infraction upon Respondent Lillian A. Young, alleging a violation of 21 DCMR 700.3, which requires property owners to containerize solid wastes properly. The Notice of Infraction alleged that the violation occurred on January 3, 2002 at 4180 Livingston Road, S.E., and sought a fine of \$1,000.

Respondent filed a timely plea of Deny, and I held an evidentiary hearing on March 6, 2002. Jonathan Harvey, the inspector who issued the Notice of Infraction, appeared on behalf of the Government and Respondent appeared on her own behalf. Based upon the testimony of the witnesses at the hearing, my evaluation of their credibility, and the documents entered into evidence, I now make the following findings of fact and conclusions of law.

II. Findings of Fact

Respondent owns a 12-unit apartment building at 4180 Livingston Road, S.E. On January 3, 2002, Mr. Harvey observed a dumpster alongside the building. The dumpster was uncovered and overflowing with bags of trash. Bags of trash also were on the ground surrounding the dumpster. Most of the trash bags were plastic, and many of them contained food wastes. The food wastes were easily accessible to rats, which could rip open the trash bags.

For several years, the trash collection company that services the building has been scheduled to make pickups twice a week. January 3, the date of Mr. Harvey's visit, was a scheduled trash pickup day, but the trash company did not make the collection until some time after Mr. Harvey left the property. The amount of trash awaiting collection on January 3 was higher than normal for two reasons: 1) the building's residents generated more trash than normal during the holiday season, due to their entertaining of friends and family members and the discarding of gift wrappings and boxes; and 2) the trash company did not make the regularly scheduled pickup on December 31.

The trash company generally has been reliable in adhering to the schedule. It has missed a scheduled pickup on only a small number of occasions over the past two or three years. In the past, Respondent has called the trash company when it missed a pickup and it has promptly sent a truck to remove the trash. Due to the New Year's holiday and the proximity of the January 3 scheduled collection date, Respondent did not call the trash company to correct its failure to remove the trash on December 31.

III. Conclusions of Law

The rule at issue provides:

All solid wastes shall be stored and containerized for collection in a manner that will not provide food, harborage, or breeding places for insects or rodents, or create a nuisance or fire hazard.

21 DCMR 700.3.

The storage of waste at Respondent's building on January 3, 2002 violated § 700.3 because rats easily could obtain food by gaining access to the plastic bags and ripping them open to get the food wastes inside. The Rodent Control Act of 2000 classified a violation of § 700.3 as a Class 1 infraction, which is punishable by a fine of \$1,000 for a first offense.¹ 16 DCMR 3201.

Respondent advances two arguments in support of her position that she is not liable for a violation of §700.3. First, she contends that she should not be responsible for the trash company's failure to make the required pickup. Section 700.3, however, places responsibility upon a property owner to ensure that solid wastes are stored properly on her property. *Bruno v. District of Columbia Board of Appeals and Review*, 665 A. 2d 202 (D.C. 1995).² The purpose of § 700.3 and the increased fines enacted by the Rodent Control Act of 2000 is to give property owners a greater motivation to take all necessary steps to control conditions that can lead to an

¹ The Rodent Control Act of 2000 is Title IX of the Fiscal Year 2001 Budget Support Act of 2000, effective October 19, 2000, D.C. Law 13-172. See 47 D.C. Reg. 8692 (November 10, 2000); 47 D.C. Reg. 6308 (August 11, 2000). Section 910(b) of that Act established new fines for violations of various rodent control measures, including § 700.3. 47 D.C. Reg. at 6339 (August 11, 2000).

² This does not necessarily mean that property owners are the only possible violators of § 700.3. At the very least, a person who stores solid waste in a manner prohibited by the rule can be liable as a violator.

increase in the rat population. Respondent could have called the trash company when the scheduled pickup was not made, instead of simply waiting until the next scheduled pickup day. By not doing so, she assumed the risk that the dumpster would not be able to contain the additional trash generated between December 31 and January 3. Having assumed that risk, she should not escape liability after the risk comes to pass.

Respondent also argues that it was unfair for the inspector to issue a Notice of Infraction on the first collection day after the holidays, when the volume of trash would be expected to be unusually high. Whether and when to issue a Notice of Infraction is a decision entrusted to the discretion of the enforcement staff of the Department of Health, including the inspector and his supervisors. “[A]bsent a substantial showing on the part of a respondent that this discretion has been unlawfully exercised,” there is no basis for this administrative court to review the decision to exercise it in this case. *DOH v. Semple*, OAH No. I-00-70294 at 5 (Final Order, September 18, 2001). *See also DOH v. Popeye’s/Faris Enterprises*, OAH No. I-00-70252 at 3-5 (Final Order, August 8, 2001); *DOH v. Anacostia Economic Development Corp.*, OAH No. I-00-10115 at 3-4 (Order Denying Reconsideration, June 26, 2001). While Respondent questions the timing of the issuance of the Notice of Infraction, she has not shown that inspector’s decision to charge her was an unlawful exercise of his discretion. Therefore, because the Government has met its burden of proving that Respondent violated §700.3 on January 3, 2002, I will impose the fine mandated by statute.

IV. Order

Based upon the foregoing findings of fact and conclusions of law, it is, this _____ day of _____, 2002:

ORDERED, that Respondent shall pay a total of **ONE THOUSAND DOLLARS (\$1,000)** in accordance with the attached instructions within twenty (20) calendar days of the mailing date of this Order (15 days plus 5 days service time pursuant to D.C. Official Code §§ 2-1802.04 and 2-1802.05); and it is further

ORDERED, that if Respondent fails to pay the above amount in full within twenty (20) calendar days of the date of mailing of this Order, interest shall accrue on the unpaid amount at the rate of 1 ½% per month or portion thereof, starting from the date of this Order, pursuant to D.C. Code Official Code § 2-1802.03 (i)(1); and it is further

ORDERED, that failure to comply with the attached payment instructions and to remit a payment within the time specified will authorize the imposition of additional sanctions, including the suspension of Respondent's licenses or permits pursuant to D.C. Official Code § 2-1802.03(f), the placement of a lien on real and personal property owned by Respondent pursuant to D.C. Official Code § 2-1802.03(i) and the sealing of Respondent's business premises or work sites pursuant to D.C. Official Code § 2-1801.03(b)(7).

/s/ **03/12/02**

John P. Dean
Administrative Judge